

**MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE**  
**February 4, 2005**

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Marriott Hotel (Los Angeles Airport) on February 4, 2005. Attendance was as follows:

**MEMBERS PRESENT:**

Curt C. Barwick  
Christopher A. Delfino  
Bruce R. Deming  
James F. Fotenos  
Matthew R. Gemello  
Steven K. Hazen  
Victor Hsu  
Brian A. Lebrecht  
Brian D. McAllister  
William R. Sawyers  
David Serepca  
Teri Shugart  
Lemoine Skinner III  
Jennifer Lynn Sostrin  
Steven B. Stokdyk  
Suzanne L. Weakley\*  
Bertha Cortes Willner  
Brian M. Wong  
Russell J. Wood

**MEMBERS ABSENT:**

Mark T. Hiraide  
Nina L. Hong  
Lee Kolodny  
Stewart Laughlin McDowell  
Deborah J. Ruosch

**LIAISONS AND GUESTS PRESENT:**

Timothy L. Le Bas, Department of Corporations\*  
Rosalind Tyson, Securities & Exchange Commission\*  
Steve Harmon, Guest  
\*Via Telephone

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

## **I. ADMINISTRATIVE MATTERS**

1. Opening Remarks and Announcements: The meeting was called to order by Co-Chairs Fotenos and McAllister at 9:30 a.m. Mr. Fotenos thanked the members of the Committee in attendance and informed them that a quorum was present.
2. Approval of Minutes of January Meeting: The minutes for the meeting on January 7, 2005 were approved in the form circulated (with minor corrections).

## **II. AGENCY AND LIAISONS' REPORTS**

1. Securities & Exchange Commission: Rosalind Tyson reported that it was her impression that "reform fervor" at the SEC seemed to have slowed somewhat. In particular, Ms. Tyson reported that the SEC had not yet reached a consensus on the final reporting-out feature of the Part 205 Attorney Conduct Rules and that there was no set timetable for their release. The shareholder nomination proposals also appear to be stalled or on hold. Ms. Tyson also announced that the comment period for the November 3, 2004 release entitled "Securities Offering Reform" had ended January 3, 2005. Ms. Tyson indicated that the SEC will be reviewing the comment letters received (which were relatively modest in number) and that it intends to move on Securities Offering Reform proposal relatively quickly (with final regulations to be released possibly before the end of 2005). Ms. Tyson indicated that the Securities Offering Reform proposal, if enacted, would fundamentally modify the registration, communications and offering processes under the Securities Act of 1933. Ms. Tyson also reported that the effective date of certain regulations requiring hedge fund managers to register as investment advisers had been deferred until 2006.
2. Department of Corporations: Tim Le Bas announced that the Department had received fourteen comment letters in response to the Department's request for comments on efficacy of the California Corporate Disclosure Act of 2002. Mr. Le Bas indicated that the Department continues to believe that the Act should (at a minimum) be conformed to federal securities law. Mr. Le Bas acknowledged receipt of the Committee's comment letter and complimented the Committee on its thorough analysis. Mr. Le Bas also discussed the Department's continuing internal analysis of the Uniform Securities Act of 2002 (the "USA Act"). Mr. Le Bas indicated that at least 24 other states are reviewing the USA Act in addition to California in order to determine whether the USA Act should be adopted in its entirety, partially or at all. Based upon meetings with other securities regulators, Mr. Le Bas also reported that California is viewed by those considering its adoption as a "major player." The Department's six person committee is headed by Mark Uyeda. Mr. Le Bas indicated that the Department hopes to release a "report" later this year containing an analysis of the USA Act in comparison with the Corporate Securities Law of 1968. Mr. Le Bas anticipates that the report will make implementation recommendations and quite possibly will have draft legislation attached for public review and comment. Mr. Le Bas further indicated that the USA Act, if fully adopted, would constitute a complete re-write of the

California Corporate Securities Act of 1968 which could include a revision in the statutory numbering system and the re-write of many definitions. Mr. Le Bas also indicated that even if the Department decides not to implement the USA Act, the Department's current analysis may at a minimum lead to reforms. Finally, Mr. Le Bas announced that July 1, 2005 was the probable implementation date for mandatory electronic filing of Form 25102(f) and that additional payment options were presently being considered.

3. Corporate Law Departments. William Sawyers reported that he had not had further contact with Corporate Law Department Chair, Barry Tobias. Mr. Sawyers suggested that the Committee may want to reach out to the American Corporate Counsel Association ("ACCA") to the extent that it had an opportunity to do so.
4. Cyberspace Law. David Serepca reported that the Cyberspace Law Committee has asked our Committee to jointly review the Sedona Guidelines (recently released "best practices" guidelines on records retention). The Committee determined that as business lawyers, it had an interest in best practices. However, the Committee decided that it would not be the best utilization of its resources to commit two members of the Committee to this project, as requested, and that the Cyberspace Law Committee should seek volunteers from other interested Committees (in particular, Litigation, Tax and Corporate Law Departments).
5. Financial Institutions. Mr. Fotenos reported that Lee Kolodny had resigned from the Committee and informed those present that the liaison position was now vacant.
6. Non-Profit Corporations. Chris Delfino reported that he would be posting an article on the Non-Profit Corporate Integrity Act on the Committee's extranet.
7. Partnerships and LLCs. Bruce Deming reported on recent legislation that was discussed at the Partnerships and LLCs January Committee meeting. Specifically, Mr. Deming reported on (i) AB 1859 which will provide a short-form LLC dissolution process available to LLCs that have been formed and have never done business (eliminating the requirement that an LLC receive a tax clearance certificate prior to dissolution) and (ii) AB 3073 which will make it easier for an LLC to operate as a non-profit (LLC statute currently requires a "business purpose"). Two recent litigation cases of interest also were discussed.

### **III. SUBCOMMITTEE REPORTS**

1. Legislation: Mr. Stokdyk briefly updated the Committee on the status of SB 119 (introduced January 27, 2005 by Senator Ackerman, to amend Section 307(b) of the California Corporations Code to clarify the definition of consent to include an interested director under certain circumstances).

2. Communications/Website: Mr. Hsu reported that he had been working with Michael Mullen of the State Bar to approve the features and functionality of the Committee's website. Mr. Hsu indicated that the Committee's ability to direct post materials and track website traffic will be very difficult to accomplish due to the way the Committee's website is structured.
3. Education/Publications: The Committee briefly discussed Ms. Shugart's recent gender bias seminar which was video taped by the State Bar. Ms. Shugart also reported that a number of possible seminar topics had been submitted for consideration for the upcoming State Bar Annual Meeting. Ms. Weakley reported that an article entitled 2004 Developments in California Corporate Law has been finalized and submitted for publication.

#### IV. 2004 – 2005 AGENDA: STATUS

1. Opinions Report. Mr. Fotenos reported that the Executive Committee had approved the dissemination of an exposure draft of the Committee's Opinion Report. The Committee determined that the exposure draft should be placed on the Committee's website and sent to various opinion law experts for review and possible comment.
2. Guide to Organizing a California Corporation. Ms. Shugart and Ms. Weakley reported that the editing subcommittee had made minor revisions to the Guide. A revised draft will be circulated to the Committee following the meeting.
3. Corp. Code §§114, 191, 600(b), 601(b) and 1501. Mr. Delfino informed the Committee that there were several sections of the California Corporations Code that had been identified as containing inappropriate cross-references to sections of the Code that no longer existed (§§ 600(b) and 601(b) for example) or that reference incorrect terms (§§114 and 1501, for example referencing a GAAP term that is no longer in use). Mr. Delfino and Mr. Stokdyk indicated that it may be possible for technical corrections legislation to be introduced into the Legislature. Such legislation could be combined into one bill, since it is likely that there will not be any substantive issues that will need to be debated.
4. USA Act Amendments. Mr. Fotenos reported that Mark Hiraide and his subcommittee were meeting to analyze the USA Act and hopefully come up with a working paper.
5. Close Corporation Model Act adoption. Mr. Serepca reported that he and Ms. Weakley were working on a report to be submitted to the Committee at the next meeting.
6. BLN Article re SOX and State Law Conflicts. Mr. Wood indicated that the Committee may wish to change or expand the scope of the proposed article.

7. BLN Article re SB 1306. Mr. McAllister reported that he was still working on an outline for the article.
8. Commentary and Annotations to National Venture Capital Association Model Forms. Mr. Skinner reported that his review was still in process.

**V. OTHER BUSINESS**

1. ABA Task Force on Attorney Client Privilege. Mr. Hazen reported that he will be one of nine speakers providing testimony to the ABA Task Force at its meeting later this month.

The meeting was adjourned at approximately 12:30 p.m.

/s/ Curt C. Barwick

Curt C. Barwick, Co-Secretary